

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1140/2006

Date of decision 5.7.2007

Gaurav Bhardwaj and others

...Petitioners

Vs.

H.P. University & another

...Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner: Mr. Sandeep Kaushik, Advocate.

For the Respondents : Mr. S.R. Sharma & Mr. V.D. Khidta, Advocates

Rajiv Sharma,J.

The brief facts necessary for the adjudication of this petition are that the petitioner No.1 was admitted to the LLB course in the year 2006. He was allotted a room in the Tagore Hostel. The petitioner No. 2 was a student of 6th Semester in Masters in Computer Application and was allotted the Dr. Y.S. Parmar Hostel. The petitioner No.3 was a student of 4th Semester in Masters in Tourism Administration and was staying as a boarder in Dr. Y.S. Parmar Hostel. The petitioner No.4 was a student of 6th semester in LLB and was allotted the Dr. Y.S. Parmar Hostel. The petitioner No.5 was studying Law in the 6th semester and was allotted Dr. Y.S. Parmar Hostel. An FIR was registered bearing No. 69 of 2006 dated 25.4.2006 under sections 147, 148, 149, 436, 492, 323 of the Indian Penal Code read with section 3 of the Prevention of Damage to Public Property Act at Police Station Boileau Ganj. The names of the petitioners find mention in the FIR dated 25.4.2006. They were issued notices by the Chief Warden on 10th May, 2006 whereby they were called upon to

¹ Whether reporter of local papers are allowed to see the judgment ? yes.

immediately vacate the hostel accommodation after the registration of the FIR No. 69 of 2006 dated 25.4.2006. The copy of one of the notices issued to the petitioner Sunil Mankotia has been placed on the paper book of this petition. Notices were issued to the petitioners by the Dean of Studies on 10th May, 2006. The copy of one of the notices issued to the petitioner No.2 has been placed on the record. Similar copies were addressed to rest of the petitioners. The petitioners had filed replies to the show cause notices dated 10th May, 2006. The Dean of Studies had issued office order dated 21st July, 2006 whereby the petitioners were expelled from the Departments of the University for the academic session 2006-2007. The copy of one of the office order issued to the petitioner No.4 has been placed on record and similar office orders were issued against the other petitioners vide Annexures P-5 to P-8. The Registrar of the University had issued notification dated 8th August, 2006 notifying the order of expulsion of the petitioners vide Annexure P-9 to P-12.

Mr. Sandeep Kaushik, Advocate appearing on behalf of the petitioners had strenuously argued that no notice was issued to the petitioners before the issuance of communication dated 10th May, 2006 whereby they were directed to vacate the hostel accommodation. He also contended that the expulsion of the petitioners is in breach of the Statute and the Ordinance framed thereunder. He further submitted that the petitioners had been expelled merely on the basis of registration of FIR dated 25th April, 2006 and the replies filed by them to the show cause notices had not been dealt with in proper perspective by the authorities.

Mr. S.R. Sharma, Advocate had supported the orders whereby the petitioners were directed to vacate the hostel accommodation and were also rusticated/expelled from the Departments.

I have heard the parties and perused the record.

Firstly the Court has to consider whether the expulsion of the petitioners from the hostel was warranted under the law or not. The University had issued Handbook of Information and clause 20.5 of the same deals with the conduct and discipline of the students in the hostel. What had been stated in the letter dated 10th May, 2006 is that the petitioners had violated sub-clause (b), (d), (h), (vi) & (ix) of clause 20.5 of Handbook of Information. The petitioners had been expelled without holding any inquiry to ascertain whether they had violated any of the clauses enumerated in the notice or not. The decision had been taken apparently merely on the basis of the registration of FIR under section 147, 148, 149, 452, 323 and 325 of the Indian Penal Code. The petitioners were required to be heard effectively before the issuance of letter dated 10th May, 2006. The notice was required to be issued calling upon the students why they should not be expelled from the hostel. No such notice has been issued by the authorities and straightway they had been directed to vacate the hostel. The petitioners were required to file replies to the show cause notices and at least a preliminary inquiry was required to be conducted whether they had violated any of the conditions enumerated in the notices. The Court is of the firm opinion that without issuing any notice and holding inquiry, they could not have been expelled from the hostel.

Secondly, the Court had to consider whether the notice dated 10th May, 2006 whereby the petitioners had been served with a notice under Ordinance 22.20 is in accordance with law or not. The basis for issuance of notice dated 10th May, 2006 seeking the expulsion of the petitioners within seven days is again based on the registration of FIR No. 69 of 2006 dated 25th April, 2006. Admittedly no independent inquiry except the registration of an FIR has been made the basis for issuance of notices dated 10th May, 2006. The registration of FIR only sets the criminal

machinery into motion. The petitioners had filed reply to the show cause notice within the stipulated period. The petitioners had denied their involvement as alleged on the intervening night of 24/25th April, 2006. They had denied their presence even on the spot. They have also taken a specific objection that the notice could not have been issued under Ordinance 22.20 since it deals with entirely different situation. They have further explained that Ordinance 22.20 deals with the situation where the orders of rustication and expulsion have been passed after giving the student an opportunity of being heard and report to this effect is sent to the Registrar. The Statute 23 deals with the maintenance of discipline amongst the students of the University. The same is reproduced as under:

“23. Maintenance of Discipline among students of the University:-

- (1) All powers relating to discipline and disciplinary action are vested in the Vice-Chancellor.**
- (2) The Vice-Chancellor may delegate all or such powers as he deems proper to such other persons as he may specify in this behalf.**
- (3) Without prejudice to the generality of power to enforce discipline under the State, the following will amount to act of gross indiscipline:-**
 - a. Physical assault, or threat to use physical force, against any member of the teaching and non-teaching staff of any institution, department and against any student within the Himachal Pradesh University;**
 - b. Carrying or use of, or threat of use of any weapon;**
 - c. any violation of the provisions of the Civil Right Protection Act, 1976;**
 - d. violation of the status, dignity and honour of students belonging to the Schedule Castes and Tribes;**

- e. any practice whether verbal or otherwise derogatory of women;
- f. any attempt at bribing or corruption in any manner;
- g. willful destruction of institution and property;
- h. creating ill-will or intolerance on religious or communal grounds;
- i. causing disruption in any manner of the academic functioning of the University system;
- j. ragging as per Statute 23-A.

(4) Without prejudice to the generality of his power relating to the maintenance of discipline and taking such action in the interest of maintaining discipline as may seem to him appropriate, the Vice-Chancellor, may in the exercise of his powers aforesaid order or direct:-

- a. that any student or students be expelled or
- b. any student or students be, for a stated period, rusticated; or
- c. be not for a stated period, admitted to a course or courses of study in a College, Department or Institution of the University, or
- d. be fined with a sum of rupees that may be specified, or
- e. be debarred from taking a University or College or Departmental Examination or Examinations for one or more years; or
- f. that the result of the student or students concerned in the Examination or Examinations in which he or they have appeared be cancelled.

(5) The Principals of the Colleges, Heads of Halls, Deans of the Faculties, Heads of Teaching Departments in the University and the Librarian, Dean of Studies, Chief Warden and Wardens of Hostels shall have the authority to exercise all such disciplinary powers over students in their respective Colleges. Faculties and Teaching Departments in the University as may be necessary for the proper conduct of institution. Halls and teaching in the concerned Departments. They may exercise their authority through delegate authority to, such of the teachers or a Committee

of the teachers, in their Colleges, Institutions or Departments as they may specify for these purposes.

- (6) Without prejudice to the powers of the Vice-Chancellor and the person to whom powers are delegated under Clause (2) detailed rules of discipline and proper conduct shall be framed. These rules may be supplemented, where necessary, by the Principals of Colleges, Heads of Halls, Deans of Faculties and Heads of Teaching Departments in this University. Each student shall be required to sign declaration that on admission he submits himself to the disciplinary jurisdiction of the Vice Chancellor and the several authorities of the University who may be vested with the authority to exercise discipline under the Act, the Statutes the regulations and the rules that have been or may be framed here under by the University.”

The Ordinances 22.18, 22.19 and 22.20 are reproduced below for better appreciation of the rival submissions made by the learned counsel for the parties:

“22.18. Rustication shall mean the loss of one academic year i.e. the student concerned shall not be allowed to appear in any University examination during the academic year in which he is rusticated. The actual period of exclusion from the college or institution shall depend upon the time of the year when the rustication order is passed. A rusticated student may, with the permission of the Head of the College or Institution concerned, rejoin his class in the same college or institution at the time of admission in the following academic year.”

22.19. A student, who is expelled from a college or institution, shall not be allowed to appear in any University examination during the academic year in which he is expelled and the next following year, and shall not thereafter be re-admitted to the same or any other college or institution without the prior sanction of the Vice Chancellor.

22.20. Each case of rustication or expulsion shall be reported to the Registrar of the University immediately after the order is

passed. A certificate signed by the Dean of Studies/Associate Dean/Head of the College or Institution to the effect that the student had been given adequate and reasonable opportunity to explain his position before the order was passed shall accompany the report.”

Mr. S.R. Sharma, Advocate had drawn the attention of this Court to the proceedings of the meeting of the Committee constituted by the Vice-Chancellor vide notification dated 23rd May, 2006 filed along with the reply. The relevant portion of the proceedings is reproduced below:

“The replies thereto and the Police Challans were also placed before the Committee. After considering the said material, the Committee was of the considered opinion that acts of gross indiscipline and misconduct have been committed by these students which amount violation of Ordinance 22.16 of the First Ordinances of the Himachal Pradesh University, 1973 (as amended) and the explanations rendered by these students in their above referred replies to the Show Cause Notices were not found to be satisfactory vis-à-vis their involvement in the act of indiscipline and misconduct by them and as such the Committee after detailed deliberations recommends as under:

- 1. The students who are studying in the different departments be put under ‘Conduct Probation’ for a period of one academic year under the provisions of Ordinance 22.16 of the Ordinances ibid;**
- 2. Those students who have not taken admission in any Course/Teaching Department are recommended to be debarred from seeking admission to a Course or Courses of study in a College, Teaching Departments of the University and Institutions affiliated to and maintained by the Himachal Pradesh University;**
- 3. The Committee further recommends that in case any of the student as listed above has already been admitted to any discipline in the University, to a Course or Courses of study in a College, Teaching Departments of the University and Institutions affiliated to and maintained by the Himachal Pradesh University before the consideration of replies to**

the Show Cause Notice to him, he shall stand expelled for the academic session 2006-2007 under the provision of Statutes 23 (4) (a) of the First Statutes of Himachal Pradesh University, 1970 (as amended).

The meeting ended with a vote of thanks to the Chair.”

Mr. Sharma further contended that there is no violation of principles of natural justice since the show cause notices were issued to the petitioners and they had been permitted to file the replies which were considered by the committee constituted on 23rd May, 2006 and it was only thereafter the office orders dated 21st July, 2006 and 8th August, 2006 were issued by the Dean of studies and the Registrar of the University. The basis for the issuance of the notification is the registration of FIR only. The University had not conducted any independent inquiry to go into the veracity of the allegations levelled against the petitioners. The notices have also been issued under Ordinance 20.20 which was not attracted at all in the present case at the initial stage. The Ordinance 20.20 only comes into play when the student is already rusticated/ expelled and the authorities send this information to the Registrar with the report disclosing therein that the student was heard before his expulsion. The issuance of notice is the out come of non-application of mind. The object of first information report from the view point of the informant is to set the criminal law in motion. The report does not constitute substantive evidence though it is important and conveying the earliest information about the occurrence. The Apex Court has explained the object and use of the first information report in **Hasib v. State of Bihar**, AIR 1972 SC 283 as under:

“Here the High Court appears to have clearly gone wrong in law. The legal position as to the object, value and use of first information report is well-settled. The principal object of the first information report from the point of view of the information is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain

information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The first information report, we may point out, does not constitute substantive evidence though its importance as conveying the earliest information regarding the occurrence cannot be doubted. It can, however, only be used as a previous statement for the purpose of either corroborating its maker under Section 157 of the Indian Evidence Act or for contradicting him under Section 145 of that Act. It cannot be used for the purpose of corroborating or contradicting other witnesses. The High Court was, therefore, in error in seeking corroboration of the testimony of P.W.10 from the F.I.R. of which he was not the maker.

The petitioners had filed reply on 15th May, 2006 to the notice dated 10th May, 2006 though the same from the very inception was bad in law. They had denied their involvement in any of the activities which had taken place on the intervening night of 24/25th April, 2006. The reply was detailed one. The authorities of the University were bound to consider the reply filed by the petitioners. What has been stated in the proceedings of the meeting constituted by the Vice Chancellor on 23.5.2006 is that the replies and the police challans were placed before the committee. The copy of the police challan could not be but before the committee since the FIR was registered on 25th April, 2006 and the matter had not gone at that stage to the competent court. The committee was only having the copies of the replies and the FIR dated 25th April, 2006. The committee had not taken into consideration the replies filed by the petitioners except making a bald assertion that they were not found satisfactory. In what manner the reply was not satisfactory has not been explained. The version of the students was also required to be considered by the committee in its deliberations which took place on 23rd May, 2006. The committee had to

consider only replies filed by the petitioners to the notices but it has exceeded its jurisdiction by making the following recommendations:

“The Committee further recommends that in case any of the student as listed above has already been admitted to any discipline in the University, to a Course or Courses of study in a College, Teaching Departments of the University and Institutions affiliated to and maintained by the Himachal Pradesh University before the consideration of replies to the Show Cause Notice to him, he shall stand expelled for the academic session 2006-2007 under the provision of Statutes 23 (4) (a) of the First Statutes of Himachal Pradesh University, 1970 (as amended).”

It was only on the basis of the recommendations made by the committee that the office order dated 21st July, 2006 was issued by the Dean of Studies expelling the petitioners from the Departments. In sequel to the office order dated 21st July, 2006, the Registrar had issued notification dated 8th August, 2006 notifying the expulsion of the petitioners. It is evident from the phraseology employed in Ordinance 20.20 that the certificate is required to be signed by the Dean of Studies to the effect that the student had been given adequate and reasonable opportunity to explain his position before the order was passed accompanying the report to be furnished to the Registrar. The emphasis is on the words ‘adequate and reasonable opportunity.’ In the present case the notice itself has been issued under Ordinance 22.20 as is evident from Annexure P-2 dated 10th May, 2006. The petitioners had filed the replies to this notice in detail but the same have not been taken into consideration at all by the committee constituted vide order dated 23rd May, 2006. The authorities were bound to consider each and every averment made in the reply filed to the show cause notice. The same could not be brushed aside by stating that the same was not found satisfactory. The entire exercise undertaken by the authorities was

mechanical without taking into consideration even the relevant provisions of law. The reply furnished by the petitioners to the notice was required to be taken into consideration and in the absence of the same, it cannot be presumed that the petitioners had been afforded adequate and reasonable opportunity as contemplated under Ordinance 20.20. The authorities were swayed by the fact that an FIR has been registered on 25th April, 2006 where the petitioners' names have been mentioned and only on that basis the notices were issued. The authorities of the University were bound to make an inquiry after hearing the petitioners. There was no material before the committee except the report of the FIR dated 25th April, 2006. It has already been discussed above that the registration of FIR only sets the criminal machinery in motion. Thereafter the investigation is required to be gone into and on that basis the challan has to be put up in the competent court of law.

It appears that the authorities had already made up their mind to expel the students merely on the basis of the registration of FIR dated 25.4.2006. There is a glaring defect in the order dated 8th August, 2006 passed by the Registrar since a certificate is required to be signed by the Dean of Studies that an adequate and reasonable opportunity to explain the position has been provided to the students accompanying the report. The University had also not placed any material on record to substantiate that in fact such certificate was accompanying the report by the Dean of Studies.

The replies furnished by the petitioners have not been taken into consideration at all since as per the language employed in Ordinance 20.20 it was incumbent upon the Dean of Studies to certify that the petitioners had been afforded an adequate and reasonable opportunity to explain their position. The Dean of Studies was also one of the members of the committee constituted by the Vice Chancellor. The committee after

deliberations had recommended the expulsion of the students. The Dean of Studies had implemented the orders of the committee of which he was also one of the members. The Committee was not called upon to make the recommendation. It was constituted primarily to look into the replies filed by the petitioners.

The expression report as mentioned in Ordinance 20.20 presupposes that inquiry ought to have been held after complying with all the provisions of law as well as principles of natural justice. The report in the context in which it is used in Ordinance 20.20 will mean the inquiry report.

The Hon'ble Supreme Court in **State of Orissa v. Dr. (Miss) Binapani Dei and others AIR 1967 Supreme Court 1269** has held that even an administrative order which involves civil consequences, has to be passed consistently with the rule of natural justice. Their Lordships have held as under:-

“It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order while involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State.”

The Hon'ble Supreme Court in a land mark judgment **A.K. Kraipak and others v. Union of India and others AIR 1970 SC 150** has held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The Supreme Court has opined as under:-

“The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought (1) no one shall be a judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala, Civil Appeal No.990 of 1968, D/-

15-7-1968 = (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.”

The Hon'ble Supreme Court in **Board of Technical Education, U.P. and others v. Dhanwantri Kumar and others AIR 1991 Supreme Court 271** has held as under:-

“The High Court found that the orders impugned before it were unsustainable for the reason that the students had not been given proper notices. The notices served on them were found by the High Court to be so vague that they could not have effectively defended themselves in the inquiry. In the absence of proper notices, the inquiry which was held was found by the High Court to be invalid for violation of the rule of natural justice. Accordingly, the high Court directed the appellant-Board to declare the results of the students who had filed the petitions in the High Court.

We have perused the records and heard counsel on both sides. On the peculiar facts and in the special circumstances of these cases, we are of the view that the High Court was justified in coming to the conclusion, which it did, that the notices served on the students were so vague and imprecise that they could not effectively defend themselves in the inquiry.”

The Hon'ble Supreme Court in **D.K. Yadav versus J.M.A. Industries Ltd. (1993) 3 SCC 259** has held that action of the authority should be impartial and should be free from even appearance of unfairness, unreasonableness and arbitrariness. Their Lordships of the Hon'ble Supreme Court have held that the procedure prescribed for

depriving a person of livelihood will be liable to be tested on the anvil of Article 14. Their Lordships of the Supreme Court have opined as under on the principle of reasonable opportunity to be afforded to an employee:-

“The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill v. Chief Election Commissioner the Constitutional bench held that ‘civil consequence’ covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation very thing that affects a citizen in his civil life inflicts a civil consequence. Black’s Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country ... they include ... rights capable of being enforced or redressed in a civil action In State of Orissa v. (Miss) Binapani Dei this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

In *State of W.B. v. Anwar Ali Sarkar* per majority, a seven-Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In *Maneka Gandhi v. Union of India* another Bench of seven Judges held that the substantive procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affect the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put

it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity or person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardizing not only not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress* the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employee was set aside.

In this case admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put

forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No.13 (2) (iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice.”

The Hon'ble Supreme Court has further expanded the principles of natural justice in **Dr. Rash Lal Yadav vesus State of Bihar and Others (1994) 5 SCC 267** as under:-

“The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge I his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time-consuming but that is the price one has to

pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indication to the contrary as in the present case. This Court in *A.K. Kraipak v. Union of India* after referring to the observations in *State of Orissa v. Dr. (Miss) Binapani Dei* observed as under: (SCC p.272, para 20)

“The aim of the rules of natural justice is to ensure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.”

These observations make it clear that if the statute, expressly or by necessary implication omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness.”

The Hon'ble Supreme Court has further elucidated the principles of natural justice in *Kumaon Mandal Vikas Nigam Ltd. versus Girja Shankar Pant and Others* (2001) 1 SCC 182 as under:-

“Since the decision of this Court in Kraipak case (A.K. Kraipak v. Union of India) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in Ridge v. Baldwin very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances – who then is a reasonable man – the man on the Clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in Ridge v. Baldwin in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even in the millennium year. As a matter of fact this Court in the case of Keshav Mills Co. Ltd. V. Union of India upon reliance on the attributes of the doctrine as above-stated as below: (SCC p. 387, para 8)

“8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yardstick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in H.K. (on infant), In re. It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin case as ‘insusceptible of exact definition but what a reasonable man would regard as a

fair procedure in particular circumstances'. However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of a case. As Tucker, L.J. observed in Russell v. Duke of Norfolk:

'The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rule under which the tribunal is acting, the subject-matter that is being dealt with and so forth.' "

While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action.

While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a

well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above, however, do find some support from the decision of this Court in the case of **Apparel Export Promotion Council v. A.K. Chopra**.

It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependent upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste; this is however, apart from the issue of bias which would be presently dealt with hereinafter. It is on this context, the observations of this Court in the case of **Sayeedur Rehman v. State of Bihar** seem to be rather apposite. This Court observed: (SCC p. 338, para 11)

“The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated 22-4-1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.”

The Hon'ble Supreme Court **in Canara Bank and Others versus Debasis Das and Others** (2003) 4 SCC 557 has explained the concept, meaning, object, scope and applicability of the natural justice. Their Lordships have explained the principles in the following manner: -

“Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense

liberal way. Justice is based substantially on natural ideas and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

The expression “natural justice” and “legal justice” do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant’s defence.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and

adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works* the principle was thus stated: (ER p. 420)

"[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?' "

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew v. Drew and Lebura* (Macq at p.8), Lord Cranworth defined it as "universal justice". In *James Dunbar Smith v. Her Majesty the Queen* (AC at p.623) Sir Robert P. Collier, speaking for the Judicial

Committee of the Privy Council, used the phrase “the requirements of substantial justice”, while in *Arthur John Spackman v. Plumstead District Board of Works* (AC at p.240), the Earl of Selbourne, S.C. preferred the phrase “the substantial requirement of justice”. In *Vionet v. Barrett* (LJRD at p.41), Lord Esher, M.R. defined natural justice as “the natural sense of what is right and wrong”. While, however, deciding *Hookings v. Smethwick Local Board of Health* Lord Esher, M.R. instead of using the definition given earlier by him in *Vionet* case chose to define natural justice as “fundamental justice”. In *Ridge v. Baldwin* (QB at p.578), Harman, L.J., in the Court of Appeal countered natural justice with “fair play inaction”, a phrase favoured by Bhagwati, J. in *Maneka Gandhi v. Union of India*. In *H.K. (An Infant), Re* (QB at p.630), Lord Parker, C.J. preferred to describe natural justice as “a duty to act fairly”. In *Fairmount Investments Ltd. v. Secy. Of State for Environment* Lord Russell of Killowen somewhat picturesquely described natural justice as “a fair crack of the whip” while Geoffrey Lane, L.J. in *R. v. Secy. of State for Home Affairs, ex p Hosenball* preferred the homely phrase “common fairness”.

How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is “*nemo iudex in causa sua*” or “*nemo debet esse iudex in propria causa sua*” as stated in Earl of Derby’s case that is, “no man shall be a judge in his own cause”. Coke used the form “*aliquis non debet esse iudex in propria causa, quia non potest esse iudex et pars*” (Co. Litt. 1418), that is, “no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party”. The form “*nemo potest esse simul actor et*

judex”, that is, “no one can be at once suitor and judge” is also at times used. The second rule is “audi alteram partem”, that is, “hear the other side”. At times and particularly in continental countries, the form “audietur et altera pars” is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely “qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit” that is, “he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right” [see Boswel’s case (Co Rep at p.52-a)] or in other words, as it is now expressed, “justice should not only be done but should manifestly be seen to be done”. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.”

In S.N. Chandrashekar and Another versus State of Karnataka and Others (2006) 3 SCC 208, where a decision was taken without proper application of mind to the requirement of law, the action was held to be bad in law. It was held as under:-

“It is now well known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reason) inconsistent, unintelligible or substantially inadequate. (See de Smith’s Judicial Review of Administrative Action, 5th Edn., p. 286.)

The Authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind

as regards the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment.”

The learned author (De Smith) in *Judicial Review of Administrative Action* has made the following pertinent observations with regard to procedural fairness (Edn. 1995 page 401): -

“Procedural fairness, as we have seen, is no longer restricted by distinctions between “judicial” and “administrative” functions or between “rights” and “privileges”. This “heresy was scotched” in *Ridge v. Baldwin*. The term “natural justice” is being increasingly replaced by a general duty to act fairly, which is a key element of procedural propriety.

The duty to act fairly is a general one, governed by the following propositions:-

- (1) Whenever a public function is being performed there is an inference, in the absence of an express requirement to the contrary, that the function is required to be performed fairly.**
- (2) The inference will be more compelling in the case of any decision which may adversely affect a person’s rights or interest or when a person has a legitimate expectation of being fairly treated.**
- (3) The requirement of a fair hearing will not apply to all situations of perceived or actual detriment. There are clearly some situations where the interest affected will be too insignificant, or too speculative, or too remote to qualify for a fair hearing. Whether this is so will depend on all the**

circumstances but a fair hearing ought no longer to be rejected out of hand, for example, simply because the decision-maker is acting in a “legislative” capacity.

- (4) Special circumstances may create an exception which negatives the interference of a duty to act fairly. The inference can be rebutted by the needs of national security, or because of other characteristics of the particular function. For example, a decision to allocate scarce resources amongst a large number of contenders which needs to be made with dispatch may be inconsistent with an obligation to hold a fair hearing. The inference may also not be drawn if the protection is to be achieved another way. For example, in the case of a “legislative” decision, at least where participation is built into the decision-making process elsewhere, the safeguard which would be provided by a fair hearing can be achieved by other means; as in cases where the decision is taken by democratically elected representatives accountable to Parliament or to the electorate for the exercise of the relevant power.

- (5) What fairness requires will vary according to the circumstances. The question of the content for the fair hearing is considered in Chapter 9 below. We shall see that some decisions, while attracting the duty to be fair, will permit no more to the affected person than a bare right to submit representations. In other cases however there will be a right to an oral hearing with

the essential elements of a trial. In between these extremes come a large variety of decisions which, because of the nature of the issue to be determined or the seriousness of their impact upon important interests, require some kind of a hearing (which may not even involve oral representations), but not anything that has all the characteristics of a full trial.

- (6) Whether fairness is required and what is involved in order to achieve fairness is for the decision of the courts as a matter of law. The issue is not one for the discretion of the decision-maker. The test is not whether no reasonable body would have thought it proper to dispense with a fair hearing. The *Wednesbury* reserve has no place in relation to procedural propriety.

The significance of this approach is that it *prima facie* imposes on all administrators an obligation to act fairly. Without acknowledging this expressly, the majority of the recent decisions of the courts are in practice no more than conscious or unconscious illustrations of the approach. They can be conveniently examined under the following three headings:

- A. Where the term of a statute confirm the inference of fair hearing;
- B. Where the inference of a fair hearing is confirmed by the need to safeguard a right or interest;
- C. Where the inference of a fair hearing is confirmed by the need to safeguard an

expectation induced by the decision-maker.”

The upshot of the above discussion is that:

- (i) **the petitioners could not have been directed to vacate the hostel accommodations without holding an inquiry to substantiate the charges levelled against them;**
- (ii) **the notices issued to the petitioners on 10th May, 2006 could not be issued under Ordinance 20.20;**
- (iii) **the issuance of notice dated 10th May, 2006 was merely based on the registration of an FIR dated 25th April, 2006.**
- (iv) **the replies filed by the petitioners to the show cause notices had not been taken into consideration by the authorities of the University.**
- (v) **the Dean of Studies was one of the members of the Committee, who had made the recommendations for the expulsion of the petitioners.**

According the writ petition is allowed. Annexure P-1, P-4 and P-9 and the similar notices issued to the petitioners are quashed and set aside. It is further directed that the University will declare the results of the petitioners forthwith and any disqualification incurred by them during the intervening period will be removed. The petitioners are also held entitled to costs, which are quantified at Rs. 5,000/- to each petitioner.

(Rajiv Sharma), J.

July 5, 2007
Awasthi